

Mandeep Singh (Migration) [2024] AATA 1442 (27 March 2024)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Mandeep Singh
REPRESENTATIVE:	Ms Stephanie Victoria Arcia (MARN: 1687634)
CASE NUMBER:	2117394
HOME AFFAIRS REFERENCE(S):	BCC2019/2572961
MEMBER:	Brygyda Maiden
DATE OF ORAL DECISION:	27 March 2024
TIME OF ORAL DECISION:	11:06am
DATE OF WRITTEN DECISION:	21 May 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211(2)(a) of Schedule 2 to the Regulations; and • cl 820.221 of Schedule 2 to the Regulations.

Statement made on 21 May 2024 at 8:25am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – marriage delayed by COVID and parents’ expectations – shared household expenses and finances since marriage – period of separation for employment – shared responsibility for housework – civil wedding before approved religious wedding – support testimonies of family and friends – emotional support – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65, 359

Migration Regulations 1994, Schedule 2, cls 820.211, 820.221; r 1.15

CASES

He v MIBP [2017] FCAFC 206

Jayasinghe v MIMA [2006] FCA 1700

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) ("the Act").
2. The applicant, and Indian national, applied for the visa on 16 May 2019 on the basis of his relationship with his sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) ("the Regulations"). The primary criteria must be satisfied by at least one applicant.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 820.211(2)(a) because the delegate was not satisfied that the applicant met the definition of spouse or de facto partner as defined under sections 5F and 5CB respectively of the Act.
4. The Tribunal notes that a significant amount of relevant evidence has been submitted by the applicant since the delegate's decision.
5. The applicant appeared before the Tribunal on 27 March 2024 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The hearing was conducted with the assistance of an interpreter in the Punjabi and English languages. The applicant was represented in relation to the review.
6. These are the reasons for the Tribunal's oral decision on 27 March 2024 that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue, in the present case, is whether the applicant is the spouse or de-facto partner of the sponsor as defined under s 5F or s 5CB respectively of the Act.
8. Middleton J stated in *Jayasinghe v MIMA* [2006] FCA 1700 at [35]:
 9. This does not mean that evidence subsequent to the visa application does not need to be considered at all. Evidence of events subsequent to the visa application is relevant if it 'tends logically to show the existence or non-existence of facts relevant to the issue to be determined': see *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 4 ALD 139 at 160 per Deane J. The Tribunal must consider all relevant evidence, which may include evidence of events subsequent to the date of application insofar as it assists in the task of determining whether the appellant and the sponsor were in a marriage relationship at the time of the application. The question of whether particular evidence is relevant and the weight it is to be given is clearly a matter for the Tribunal.
10. Accordingly, the Tribunal has also had regard to evidence of events subsequent to the date of the visa application.
11. **Pre hearing s 359A of the Act invitation**
12. On 5 March 2024, the Tribunal wrote to the applicant notifying the applicant that the Tribunal received a s 376 of the Act non-disclosure certificate dated 30 November 2021 issued by the Department of Home Affairs which was revoked on 20 February 2024. The Tribunal attached the initial certificate and revocation. The Tribunal also attached the new s 376

of the Act non-disclosure certificate issued on 20 February 2024. The Tribunal explained that it had formed the initial view that the certificate was valid and invited submissions on the validity of the certificate by 19 March 2024. The Tribunal also exercised its discretion to disclose the gist of the certificate under s 359A of the Act and invited the applicant to comment on or respond to information which the Tribunal considers would subject to the applicant's comments or response, be the reasons or part of the reason for affirming the decision under the review. The Tribunal made clear it had not made up its mind about the information. The Tribunal gave the applicant until 19 March 2024 to respond.

The particulars of the information are that documents CLD2021/34070293 and CLD2021/34070117 contain:

- a. information from an anonymous source on 15 August 2021 reporting that Gaurveen [sic] Kaur (which appears to be reference to your sponsor) was involved in payment for marriage and false documents. Details of a third party were also provided but will not be disclosed for privacy reasons.
- b. Department screen shots that indicate that an allegation was received pertaining to a possible contrived relationship with your sponsor.

The information is relevant to the review because it may lead the Tribunal to doubt you are in a genuine and continuing relationship with your sponsor and doubt that you lived together as claimed. In order for you to be granted the visa, the Tribunal needs to be satisfied that the relationship between you and your sponsor is genuine and continuing as per s 5F(2)(c) of the Act.

The consequences of the Tribunal relying on this information is that it may lead it to find that you are not a 'spouse' of your sponsor within the meaning of s 5F of the Act, and as a consequence, that you do not satisfy cl 820.211 and cl 820.221 of Schedule 2 to the *Migration Regulations 1994* (Cth) for the grant of a Partner (Temporary) (Class UK) visa. This would be the reason, or a part of the reason for the Tribunal to affirm the decision of the delegate to refuse your visa.

13. Submissions were made by the representative on 19 March 2024 indicating that the parties' denied any wrong doing and that bank statements submitted by the parties do not support that allegation. The parties did have periods where they were living separately but not apart on a permanent basis, their relationship was not accepted by the sponsor's parents which meant the wider Sikh community was not aware of their relationship, but they were committed to complying with the religious expectations regarding their relationship and marriage and COVID delayed their religious engagement and marriage. It was submitted that a community member may not have been aware of the circumstances of the parties' relationship which may have caused a misunderstanding. When considered in conjunction with all the evidence before the Tribunal, the Tribunal accepts the submission.

Are the parties in a spouse or de facto relationship?

14. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case, the applicant claims to be the spouse of the sponsor who is an Australian citizen. A copy of the bio pages of her Australian passport appear on the Department file.
15. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together,

or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

16. Relationship background

17. According to the parties' joint relationship statement on the Department file dated 14 May 2019, the applicant sent the sponsor a request on Facebook. She did not accept it as she had not seen him around. She subsequently saw him at the Shepparton Sikh Temple and after seeing him she accepted his request. The parties messaged each other, became good friends and started calling each other and going out for coffee or lunch. The sponsor messaged the applicant and told him that she liked him and asked him to go out with her on 29 November 2015, to which he agreed. On the sponsor's 18th birthday the applicant purchased her a diamond ring, and the parties were married on 13 March 2019. The Department file contains photographs of the parties at the Shepparton Law Court with the sponsor holding the parties marriage certificate. There are also photographs with others on that day.
18. According to the representative's submissions dated 25 June 2023, it *"is not customary in the Sikh religion for a boy and a girl to begin a relationship prior marriage...the relationship between the Applicant and Sponsor was one that was kept quiet for many years. The applicant and Sponsor have both emphasised the strong requirement for religious marriage in order to be accepted as a couple within their community and especially with regards to the Sponsor's parents accepting the relationship."* The sponsor's father was contacted in approximately June or July 2018 by someone in the community to advise him that the sponsor was with a man when she ought to have been at school. The sponsor then informed her parents of the parties' relationship and her desire to marry the applicant. At that time, the sponsor's parents did not approve of the parties' relationship. Despite this, the parties were married in a civil marriage ceremony on 13 March 2019. However, even though the parties' were already married, the Sikh religion requires the marriage to be legitimised through a Sikh ceremony.
19. The representative's 24 June 2023 submissions indicate that the parties had a religious engagement celebration on 4 August 2021 with people from the Sikh community attending. The applicant submitted a copy of the parties' engagement invitation and photographs of the engagement ceremony and photographs of the parties with friends and family. The parties had a religious marriage on 4 January 2023. The applicant submitted photographs of the parties pre wedding photo shoot in India on 16 December 2022, copies of the parties' religious wedding invitation at Gill Resort and numerous photographs of the parties' wedding celebrations and religious events with friends and families. Photographs of the parties reception on 5 January 2023 with friends and family were also submitted. The Tribunal affords this weight.

Are the parties validly married?

20. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The applicant submitted a Victoria, Australia marriage certificate indicating that the parties' marriage was solemnised on 13 March 2019 and registered on 24 June 2019. The applicant also attached the parties' marriage certificate on 4 January 2023 in accordance with the Gurmaraada (Sikh Rites) in India. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

21. **Are the other requirements of the spouse relationship met?**

22. *Financial aspects of the relationship*

(a) *Do the parties have any joint ownership of real estate or other major assets, any joint liabilities and does one person in the relationship owe any legal obligations in respect of the other?*

23. There is no evidence before the Tribunal that the parties have any joint ownership of any real estate or other major assets, and that the parties have no joint liabilities together. The applicant at hearing indicated that neither party had a will and he had no superannuation. The sponsor indicated that the beneficiary of her superannuation might be the applicant but she was not sure.

(b) *What is the extent of any pooling of financial resources, especially in relation to financial commitments?*

24. In relation to the extent of pooling of financial resources, from the bank statements submitted to the Tribunal, the parties opened a joint account on 29 May 2019 at the Commonwealth Bank prior to the time of application. Statement were submitted to the Tribunal from 1 July 2019 until 30 December 2022, and transaction listings from 31 December 2022 until May 2023 and 1 June 2023 until 30 June 2023. A statement was also submitted from 1 July 2023 until 30 December 2023. The statements indicate that that account is regularly used and the parties' evidence was that both of their earning are now deposited in the account. Statement 11 of the parties' joint account shows both parties' wages deposited into the joint account. Initially, that was not the case. The parties' evidence was that the sponsor worked a couple of hours in a pizza shop. The sponsor told the Tribunal that at that stage her parents who did not approve of the parties' relationship still checked her bank account to make sure she was not spending too much money so her money remained in her personal account. The representative's submissions dated 15 June 2023 state that when the joint account was opened the sponsor was completing grade 12, and could not contribute. However, both parties had cards to the account. The Tribunal accepts this evidence.

(c) *What is the basis of any sharing of day-to-day household expenses?*

25. In relation to sharing of day-to-day household expenses numerous bills were submitted in joint names in addition to those on the Department file. The Tribunal does not give the bills much weight as according to parties' oral evidence they were not living with each other day-to-day until after their religious marriage on 5 January 2023. Since this time, the Tribunal accepts that the parties share household expenses, are currently living with the sponsor's parents and contribute \$1500 a month for expenses (this is reflected in the bank statements submitted). The applicant also submitted copies of his in-law's joint NAB account which indicate that these payments are made into this account. The Tribunal affords this weight.
26. Invoices were also submitted in both parties names of joint purchases. The Tribunal affords this a small amount of weight.

27. *Conclusion on the financial aspects of the parties' relationship*

28. At the time of application and time of decision, the parties have no joint ownership of real estate or other major assets, no joint liabilities, the applicant owes no legal obligations to the sponsor and the sponsor was not certain if the applicant was the beneficiary of her superannuation. At the time of application, given that the sponsor was still in high school, working a couple of hours a week and in a relationship and then in a marriage with the applicant that was not supported by her parents, the financial aspects of the parties'

relationship were limited to the parties' joint account which the applicant did not financially contribute to. However, the Tribunal accepts the evidence that the sponsor was able to access the joint account. Although the Department file indicates that joint bills were submitted, the Tribunal does not accept that these were actually shared at that time, as the sponsor did not have the financial means, and they were paid for by the applicant. At the time of application the financial aspects do not provide much support for the parties being in a genuine spousal relationship.

29. At the time of decision, the parties still maintain a joint account and the Tribunal accepts the parties' evidence that the parties pool their financial resources, and pay a contribution to household expenses. There is evidence that the parties' are contributing to joint household expenses in respect of the home they share with the sponsor's parents. On balance, although there is evidence of the financial aspects of the parties relationship, it does not provide strong support for the parties' being in a genuine and continuing relationship.

30. *Nature of the household*

(a) Do the parties have any joint responsibility for the care and support of any children?

31. There is no evidence before the Tribunal that the parties have any joint responsibility for the care and support of any children.

(b) What are the living arrangements of the parties?

32. In respect of the parties' living arrangements, according to the representative's submissions dated 25 June 2023, the parties shared a house after they married at Ashenden Street, Shepparton during the day whilst the sponsor's parents were at work. The sponsor cooked and cleaned the house and the applicant took her or collected her from school. According to the applicant's statutory declaration dated 30 May 2023, although it was not accepted that the parties be together prior to a Sikh religious ceremony the parties did that for a period of six months. The parties separated due to the applicant working in Melbourne and having his own taxi (which was not at that stage possible in Shepparton due to its size) and due to the applicant studying.

33. The parties commenced living together permanently on 4 January 2023 after their religious marriage. This is consistent with the parties' evidence at hearing. According to the representative's submissions dated 19 May 2024, the sponsor was struggling to obtain employment in Werribee where the parties were living together. Her former employer in Shepparton (Honeysuckle Regional Health – Aged Care), was happy to have her return. *"The Applicant also indicated he would be able to transfer his taxi over...The Applicant was offered an opportunity to use a taxi in Shepparton. As such, the Sponsor requested to work back at the Aged [sic] care facility she had been working at in the area and they both moved back to her parent's house. This occurred in July 2023."* The applicant's evidence was consistent with this at the hearing, and that the parties continue to live with the sponsor's parents. To this end, the applicant submitted a change of address notice dated 17 July 2023 for the sponsor with the address being her family home. The applicant also submitted his personal bank statement from 22 July 2023 until 22 January 2024 which show the address as the sponsor's family home. The applicant also submitted the sponsor's employee pay advice printed on 12 July 2023 consistent with her working at the aged care facility. Bank account statements were also submitted by the applicant from the sponsor's employer. The sponsor's salary sacrifice expense account was also submitted from August 2023 until March 2024. The applicant submitted a statutory declaration from the sponsor's mother, Harbinder Kaur's dated 6 March 2024 confirming that the parties had been living in their home since July 2023.

(c) Is there any sharing of the responsibility for housework?

34. In relation to the sharing of house work, the sponsor's statutory declaration dated 30 May 2023 outlines that the sponsor cooks the applicant's breakfast at 5:30am, the sponsor goes to work, the sponsor returns to bed, wakes at 10:30am cooks her own breakfast, does the dishes, cooks lunch and calls the applicant to come home for lunch and the parties have lunch together. The sponsor cleans up after work and spends some time with her budgies. The sponsor calls the applicant's family in India and other relatives and cooks dinner. The parties have dinner together then watch television. The parties have since that declaration moved in with the sponsor's parents. The applicant told the Tribunal that he helps the sponsor's father with gardening, especially with the vegetable patch, washing the cars and feeding the dog. The sponsor helps her mother cook and clean. This is generally consistent with the statutory declaration of Harbiner Kaur dated 6 March 2024.

35. *Conclusion on the nature of the household*

36. At the time of application, the parties have no children and no care for the support of any children. In respect of the parties' living arrangements, the parties claimed to initially live together during the day only due to the sponsor's parents not accepting the parties' relationship and there is a small amount of evidence as to the parties sharing the responsibility for housework. Although there is a small amount of evidence as to the nature of the household it does not provide strong support for the parties being in genuine and continuing relationship.

37. At the time of decision, the parties have no children and no care for the support of any children. In respect of the parties' living arrangements there is evidence that the parties live together with the sponsor's parents at the sponsor's family home and share responsibility for housework. The Tribunal is satisfied that the nature of the household provides support for the parties being in genuine and continuing relationship and living together.

38. *Social aspects of the relationship*

39. The Tribunal has considered evidence of the social aspects of the relationship, including whether the persons represent themselves to other people as being married to each other, the opinion of the persons' friends and acquaintances about the nature of the relationship, and any basis on which the persons plan and undertake joint social activities.

40. (a) *Do the parties represent themselves to other people as being married to each other? What is the opinion of friends and acquaintances about the nature of the relationship?*

41. The applicant submitted a Nixon Street Medical Centre patient information form for the applicant dated 13 March 2023 indicating that the sponsor is his wife.

42. The applicant submitted the sponsor's 2021-22 tax return which at that stage indicated that her taxable income was \$33,209 and her spouse was listed as the applicant.

43. According to the sponsor's statutory declaration dated 30 May 2023, three of the applicant's friends joined the parties for their civil wedding, but the sponsor's parents were not there (as they were not aware of the wedding and did not approve of the relationship) but the parties' had the blessing of the applicant's parents (which is consistent with the applicant's parents' statements discussed below). The parties had a religious wedding in India on 4 January 2023, and the parties, the sponsor's parents and her brother flew to India for the wedding. The parties had their friends and relatives from the UK, Canada and India attend.

44. An updated quote addressed to the applicant for wedding shoots was addressed to the applicant. Various documentation to indicate that a wedding was occurring in India between the parties was submitted.
45. The Department file contains form 888 statutory declarations from:
- a. the applicant's friend Mr Pushpinder Singh Saini dated 24 April 2019. At that time he had known the applicant for 4.5 years and the sponsor for 3 years and 4 months. The applicant introduced the sponsor to Mr Saini, and they visit his house frequently and joined a family day trip to Yarrowonga. The parties are legally married and are a sweet and loving couple.
 - b. Mr Bilal Arif, dated 24 April 2019, who drives taxis in Shepparton with the applicant whom he had known for two years at the time of the declaration. They became close friends, and later the applicant introduced him to the sponsor. He has shared the same place with them for the last eight months. He was a witness to the parties' marriage, has seen them go to the cinema, family gatherings and other places together.
 - c. Mr Majiner Singh dated 27 May 2020 who at the time of the declaration had been the applicant's friend for four years and two months. He has known the sponsor for two years. The applicant discusses the parties' future plans with him.
46. The applicant submitted form 888 statutory declarations from:
- a. Mr Ravinder Singh (the sponsor's father) dated 2 June 2023. He has known the applicant since he found out about the parties relationship in 2018 which he was unhappy about due to his daughter's young age. He accepted the parties to be engaged in August 2021 and he travelled with the parties to India in November 2022 for their wedding. The parties tried for many years to convince him of their relationship and it took a long time for him to accept it which he did on their religious engagement in 2021. He has seen how the applicant cares for and loves the sponsor.
 - b. Ms Harbinder Kaur (the sponsor's mother) dated 24 June 2023. She and her husband found out about the parties' relationship when someone in the community called her husband to notify them that the sponsor had been seen with *"a boy in the town. We were both really angry & shocked"*. The sponsor told her that she wanted to marry the applicant but Ms Kaur could not agree due to the sponsor's young age and being in high school. Ms Kaur told her not to remain in contact with the applicant but the parties did not listen. The parties relationship was accepted in 2021 with the parties' religious engagement in August 2021. In early 2021, the sponsor and her brother told Ms Kaur that the parties had a civil wedding and had not told her. She was concerned that the sponsor's father would try and end the relationship so she decided to support the parties and hide it from the sponsor's father as he has strong Indian cultural and religious beliefs. The parties stayed together without her and her husband accepting their relationship and continued their life together. After the parties' religious wedding, the sponsor became ill and was hospitalised. The applicant stayed with her until she was discharged and Ms Kaur was happy to see the sponsor well taken care of by the applicant.
 - c. Mr Arunveer Singh (the sponsor's brother) dated 24 June 2023. He has known about the applicant since 2016 when the sponsor told him about him,

and she used to tell him not to tell their parents. He saw how the sponsor never gave up on the parties' relationship even when their parents found out and their father told her not to stay in touch with the applicant and used to check her phone. The parties hid their civil wedding in 2019 from Mr Singh and the sponsor's parents until early 2021. The sponsor told him first and then their mother but it was initially withheld from their father because of his strong cultural and religious beliefs. The parties had a religious engagement in 2021 and they and other relatives had to convince the sponsor's father, which they finally did. The parties had their engagement in August 2021. He went to India with them for their religious wedding. He has seen them at many family occasions, gatherings and celebrations, seen them grow together and talk about the future.

- d. Mr Ravi Singh Thind dated 25 May 2023. At the time of the statement he knew the parties' for four year. He knew the sponsor since January 2019, and started working with her in December 2019 at the Violet Town Bush Nursing Home. They carpooled to work and the sponsor would tell him about the applicant. The sponsor phoned the applicant during her lunch and morning tea breaks. Mr Thind has shared birthdays, family gatherings and the sponsor's bridal shower was at his house and he attended the parties' wedding in India with his family. He has seen the parties support each other in their decisions and care for each other.
- e. Mr Majinder Singh dated 16 May 2023. He is a work friend of the applicant and at the time of the statement had known the applicant for approximately 7 years and the sponsor for four. He catches up frequently with the parties for coffee or dinner at his home or dinner at the parties' home. The parties' show love and care for each other. The applicant has discussed becoming a father with him and starting a family with the sponsor.

47. The applicant submitted statutory declarations from:

- a. Ms Kashmitraa Chandramohan dated 14 July 2023. She has known the sponsor since year 10 (and went to high school with her) and the applicant since 2017. She saw the sponsor texting the applicant at lunch and she would always call him during free time at school. The applicant was possessive of the sponsor and caring towards her. When the sponsor was in year 12 they were allowed to go to McDonald's for lunch and the parties used to meet there. The sponsor told him about the parties' civil wedding ceremony in 2019. She was unable to go to the parties' wedding in India. Ms Chandramohan listed a number of social occasion that she attended together with the parties, and noted attending the parties' religious engagement and the sponsor's bridal shower of which there were 25-30 people, most of which were the sponsor's Indian girlfriends. She has seen the parties caring and supportive of each other since the sponsor was in high school.

48. The applicant submitted form 888 statutory declarations from:

- a. Mr Nirmaldeep Singh dated 29 May 2023. He is a good friend of and known the applicant since 2014 and at the time of declaration known the sponsor for four years. He knew of the parties' relationship in 2015. He travelled from Sydney for the parties' civil wedding ceremony, and the parties also invited him to their traditional engagement on 4 August 2021 which he could not attend due to the COVID travel restrictions, but he was sent photographs and

videos. He also went to the Gold Coast together with the parties, his parents and friend from 22 to 24 January 2022 and the visited many sites. He attended their traditional wedding function and reception in India and stayed at the applicant's place. Recently the parties visited Sydney and went to the Easter Show with Mr Nirmaldeep and his friends as well as other sights.

49. The applicant submitted statements from:

- a. Ms Gaginer Kaur (Nirmaldeep's mother) which is stamped by a Notary Public in India on 22 May 2023. Ms Kaur has known the applicant since 2014 as he is her son Nirmaldeep's friend. She was told from her son about the parties' relationship in 2019 and that they were going to have a civil wedding. She was also told that the parties planned to go to India for a traditional wedding. She has known the sponsor since 2019 and has seen the parties go from boyfriend and girlfriend to a mature couple. She, the parties, her son, and others went to the Gold Coast together from 22 to 24 January 2023. She was not able to attend the parties' religious engagement due to the COVID travel restrictions or the wedding as she was in Australia at the time, but her son did attend the wedding in India. On 23 January 2023, Ms Kaur returned to India and invited the parties for dinner. She often speaks to them on calls and messages. The parties understand each other and help each other with decision making. WhatsApp communications were also submitted with Ms Kaur and it is not clear who else, but show various photographs of the parties including of their religious marriage ceremony amongst others.
- b. Mr Kulwant Singh (Nirmaldeep's father) which is stamped by a Notary Public in India on 22 May 2023. The applicant is his son's friend whom he has known for nine years and the sponsor for four years. He has known the parties as a couple for four years. His son informed him of the parties' civil wedding in 2019. He went to the Gold Coast with the parties and others from 22-24 January 2022. He could not attend the parties' religious wedding as he was in Australia but his brother and son and his wife's sister's daughters' family from Australia did. He went to India on 23 January 2023 and invited the parties for dinner. He has been in touch with the parties via video calls and social network sites. He has seen the parties love and care for each other and has spoken to the applicant about their religious wedding and seen his excitement. Call records were submitted with Mr Singh in 2023 though it is not clear whose phone those records came from.
- c. Mr Randhir Singh (the applicant's father) attested on 22 May 2023 in India. He has known the parties as a couple since 2017. In 2019, Mr Singh gave the parties his blessing on a video call for a civil wedding. He met the sponsor in December 2022. The parties were married on 4 January 2023. The sponsor resided with them for one month in India after the wedding from 4 January 2023 until 7 February 2023. He has been to the sponsor's parent's house twice on 6 January 2023 and on 7 January 2023 with the parties and others. He has seen the parties love and care for each other.
- d. Ms Gurmit Kaur (the applicant's mother) attested on 22 May 2023 in India. She has known the parties as a couple since 2017. She watched their religious engagement held on 4 August 2021 via video call. The parties married on 4 January 2023 in India, and the sponsor resided with her for one month in India on 4 January 2023 until 7 February 2023. She met with the sponsor's parents after the wedding. She confirms the parties' relationship is genuine as the sponsor is the perfect daughter in law that Ms Kaur "*always*

dreamed of". She fits into their family easily and cares about everyone in their family.

- e. Mr Lovdeep Singh (the sponsor's twin brother) attested on 22 May 2023 in India. He was introduced to the sponsor one year after their relationship in 2016. The applicant told him that the parties were in a relationship. He has never been to Australia and did not meet the sponsor until the parties' traditional wedding in India. He was aware of their civil wedding on 13 March 2019 and loved seeing the photographs. He has seen the parties *"supporting each other at every stage of their life like a husband and wife."*
- f. Ms Mandeep Kaur (the applicant's sister-in-law) attested on 22 May 2023. She has known the applicant since she married his brother and has known the sponsor as a couple 4-5 days after her wedding in 2016 as her husband informed her of their relationship. She met the sponsor in India in November 2022 prior to the parties' traditional wedding. She has been aware of their relationship from the start and seen them grow as a couple.

50. At the time of application there is evidence that the parties represented themselves as being married to each other as well as opinion from friends and acquaintances (as well as family) as to the nature of their relationship. The Tribunal affords this some weight. At the time of decision, because the relationship is now accepted by the sponsor's family there is significant evidence that that parties represent themselves as being married to each other and opinion evidence from the parties' friends, acquaintances and family as to the nature of their relationship. The Tribunal affords this significant weight.

51. *(b) Is there any basis that the parties' plan and undertake joint social activities?*

52. The Department file contains photographs of the parties in July 2016 in what appears to be a bedroom and then in 2017 in a car and a restaurant together, and in 2018 in front of a car and in a café. In 2019, photographs were submitted of the parties at the sponsor's grade 12 graduation, at her birthday celebration with others, at the parties' respective homes, and shopping in Melbourne. In 2020, photographs were submitted of the parties visiting friends and at the sponsor's parent's house.

53. Numerous dated and labelled photographs were submitted of the parties from 27 December 2015 until 2023. The photographs show the parties attending various celebrations and in various social setting with others. They also show the parties travelling around Victoria and to the Gold Coast (with others), at various places in India (with others) and at the sponsor's diploma of nursing graduation ceremony. The Tribunal gives this weight.

54. Copies of itineraries of the parties travelling to the Gold Coast, to Delhi and various hotel invoices in joint names were submitted. The Tribunal gives this some weight.

55. *Conclusion on the social aspects of the relationship*

56. At the time of application there is evidence that the parties represented themselves as being married to each other as well as opinion from friends and acquaintances (as well as family) as to the nature of their relationship. There was a small amount of evidence that the parties' planned and undertook social activities. On balance, the social aspects of the parties' relationship provides some support for the parties' being in a genuine and continuing relationship.

57. At the time of decision, there is significant evidence that that parties represent themselves as being married to each other and opinion evidence from the parties' friends, acquaintances

and family as to the nature of their relationship. There is significant evidence that the parties plan and undertake joint social activities in the form of itineraries, invoices, statements or statutory declarations from others and photographs. On balance, the social aspects of the parties' relationship provide strong support for the parties being in a genuine and continuing relationship.

58. Nature of persons' commitment to each other

59. The Tribunal has considered evidence of the nature of the persons' commitment to each other, including the duration of the relationship, the length of time the parties have lived together, the degree of companionship and emotional support that the persons draw from each other and whether the persons see the relationship as a long-term one.

(a) What is the duration of the relationship?

60. According to the representative's submissions dated 25 June 2023 the parties' relationship to the exclusion of all others began on 29 November 2015 and the parties were married on 13 March 2019. The parties gave generally consistent evidence that their relationship started in 2015, with the applicant stating it was November 2015. At the time of application, the parties had been in a relationship for approximately 3.5 years. The Tribunal affords this some weight. At the time of decision the parties have been in a relationship for approximately 8.5 years. The Tribunal affords this significant weight.

(b) What is the length of time the parties have lived together?

61. The representative's submissions dated 25 June 2023 state that after the parties married (13 March 2019) the parties shared a household at Ashenden Street, Shepparton during the day. The sponsor would be there during the day whilst her parents were at work. The parties were separated for the following reasons:
62. a. Sikh customs and religious beliefs;
63. b. the sponsor's parents disapproval of the parties' relationship, and particularly that of the sponsor's father who disapproved of a religious engagement when other family members had supported it; and
64. c. the COVID-19 pandemic and lockdowns between 2020 and 2022.
65. The Tribunal accepts this submission as it is consistent with statements submitted by the applicant.
66. The applicant stated that the parties were married in India on 4 January 2023 and have been living together ever since.
67. The Department file contains statutory declarations from the applicant and sponsor both dated 20 May 2020 which indicated that at that time, the parties were living at separate addresses: the sponsor at Alan Street, Shepparton and the applicant at Judkins Avenue, Hoppers Crossing. The applicant moved in with his cousin due to his study and work commitments and the sponsor has moved in with her parents due to her study and work in Shepparton. The sponsor's statutory declaration indicates that the applicant moved to Melbourne in September 2019 and the sponsor stayed with her parents.
68. The sponsor's statutory declaration dated 30 May 2023 indicates that after the parties returned from their wedding in India in February 2023 the parties moved into their rental house in Mathoura Avenue, Werribee. The applicant submitted a residential rental

agreement for that property with both parties listed as “renters” for an agreement commencing on 1 September 2022 and ending on 31 August 2023. A bond receipt received by the Residential Tenancies Bond Authority in the name of both parties was received on 2 September 2022. An undated letter to the sponsor from the Department of Health in relation to shigellosis to the Werribee address was submitted dated 9 March 2023. A RACV summary of cover dated 27 May 2023 was submitted addressed to both parties at the Werribee address. liNet internet bills invoiced on 26 February 2023 were issued to the applicant at the Werribee address.

69. The Tribunal accepts that the parties have been living together since their wedding in India and affords this some weight. The Tribunal also accepts that at the time of application that the parties were not living separately and apart on a permanent basis, and there were circumstances as discussed above that prevented them from living together full time.

70. (c) *What is the degree of companionship and emotional support that the parties draw from each other?*

71. The applicant submitted screenshots of the applicant’s Facebook messages, including interpreted versions between the parties from December 2017 until April 2023 which indicates that the parties communicate.
72. The sponsor’s statutory declaration dated 30 May 2023, indicates that she had an abortion on 17 August 2021 as she unexpectedly found out she was pregnant and her parents had just accepted the parties’ engagement. To this end documentation was submitted from Marie Stopes Australia consistent with the sponsor’s evidence. The sponsor’s parents have strong “*religious Sikh marriage beliefs*”. The sponsor was concerned that this could ruin the trust the parties had built with them and were not ready for a child. The applicant came with her but due to COVID he could not enter, and stayed outside. The Tribunal accepts that this was an emotional time in the parties’ relationship.
73. The applicant stated that the sponsor had given him emotional support as the sponsor’s parents came to know about him in 2018 and were not supportive of their relationship. The sponsor told the applicant that she could not live without him and was very supportive and tried to convince her parents to understand that the parties could not live without each other. The sponsor stated that she had given the applicant support when the applicant was studying after the civil wedding. She noted that he was continually getting stressed as he was travelling to Melbourne to study and travelling to Shepparton and driving a taxi. He was getting physically and emotionally stressed and the parties decided that the applicant moving to Melbourne would be less stressful.
74. The applicant stated that he had given the sponsor emotional support as she gets nervous quite easily and the morning of the hearing was worried about what would happen, and he had told her that he would support her. When the parties lived at Werribee, and the applicant was at work, the sponsor used to be all alone and he used to take her out so she did not feel so lonely. The sponsor told the Tribunal that when she started nursing, she was scared and stressed most of the time. She recalls crying to the sponsor on the phone and was stressed about the books and the cost and that she did not earn enough, and the sponsor told her to use the joint account. Throughout her nursing studies he has been supportive when she had her exams, she would cry a lot, think she would fail and he had trust in her. This is consistent with translated chat records submitted by the parties on 7 August 2019 at 09:40.
75. The Tribunal accepts that at the time of application and time of decision that the parties drew companionship and emotional support from each other.

76. (d) *Do the parties see the relationship as long-term?*

77. The applicant's statutory declaration dated 30 May 2023 states that the parties plans are to build a house and have their first baby. If the sponsor is able to obtain a job as a nurse the parties will remain in Melbourne otherwise they will consider moving to Shepparton. The applicant will continue to drive taxis.
78. At hearing the parties had by this stage moved back to Shepparton and gave consistent evidence that their plans for the future were to buy a house near the sponsor's parents house in Shepparton and have two children.
79. Both parties eventually gave consistent evidence that if the applicant had to return to India (the sponsor said after all appeals had failed), she would move to India to be with him.

80. *Conclusion on the nature of the persons' commitment to each other*

81. At the time of application, the parties had been in a relationship for approximately 3.5 years and were not living together other than during the day due to the sponsor's parents disapproval of the parties' relationship. There is evidence that the parties drew companionship and emotional support from each other, and married despite the sponsor's parents not knowing and not supporting their relationship which indicates their commitment to each other. On balance, the nature of the persons' commitment to each other provides some support for the parties being in a genuine and continuing relationship, having a mutual commitment to a shared life and living together and not living separately and apart on a permanent basis.
82. At the time of decision, the parties have been in a relationship for approximately 8.5 years and have been living together continuously since their religious wedding in January 2023 to date. There is evidence that the parties draw companionship and emotional support from each other, and they see the relationship as long term – which appears to be supported by their commitment to each other and attempting to seeking the sponsor's parents approval of their relationship which they ultimately achieved. There is evidence that the parties see their relationship as a long term one. On balance, the nature of the parties' commitment to each other provides support for the parties being in a genuine and continuing relationship, having a mutual commitment to a shared life, and living together and not separately and apart on a permanent basis.

83. **CONCLUSION**

84. On the basis of the above, the Tribunal is satisfied that the requirements of s 5F(2) of the Act are met at the time the visa application was made and at the time of this decision. Therefore, the applicant meets cl 820.211(2)(a) of Schedule 2 to the Regulations; and cl 820.221 of Schedule 2 to the Regulations. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

85. **DECISION**

86. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl 820.211(2)(a) of Schedule 2 to the Regulations; and
 - cl 820.221 of Schedule 2 to the Regulations.

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- Brygyda Maiden
Member

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